S.B.CIVIL WRIT PETITION NO.868/2006

Smt.Sohani Devi
v.
Bhagwati Lal & Ors.

Date of Order :: 6th March, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. K.C.Samdaria, for the respondents.

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The petitioner defendant submitted an application before learned trial court under Order 8 Rule 1(3) CPC read with Section 151 CPC seeking leave to produce two documents, those are, a certified copy of the judgment dated 15.7.2005 passed by Civil Judge (JD), South, Udaipur and a copy of the written statement filed on behalf of the petitioner in the suit decided by judgment dated 15.7.2005.

Learned Additional District Judge (Fast Track) No.6, Udaipur by order impugned dated 10.11.2005 accepted the application in part by granting leave to produce a certified copy of the judgment dated 15.7.2005 but refused to produce copy of the written statement. Learned trial court denied leave to produce the copy of the written statement being sought at belated stage. The order aforesaid dated 10.11.2005 is under challenge in this petition for writ.

It is contended by counsel for the petitioner that the written statement which is not permitted to be produced pertains to the suit which was decided on 15.7.2005 and the learned trial court has already granted leave to produce certified copy of the judgment referred above and the written statement is required to be produced as the judgment dated 15.7.2005 deals with its contents also. There was no occasion for the defendant petitioner to produce the copy of the written statement earlier as the suit to which it pertain came to be decided on 15.7.2005.

A reply to the writ petition is filed on behalf of the respondents plaintiff stating therein that before approaching this Court the petitioner filed a review petition and during pendency of review petition this writ petition was filed, therefore, the same is not required to be entertained. It is further contended in reply to the writ petition that the written statement which is sought to be produced by the petitioner defendant is having no relevance and is also not admissible in evidence.

Heard counsel for the parties.

It is true that the petitioner before approaching this Court filed a review petition which came to be rejected by an order dated 13.2.2006. The

application for review has already been decided, therefore, I do not consider it appropriate to throw this writ petition on the count that a review petition has already been filed by the petitioner.

Learned trial court dismissed the application preferred under Order 8 Rule 1(3) CPC being belated. The trial court while doing so has not taken into consideration the circumstances leading to produce the written statement alongwith the judgment dated 15.7.2005. No doubt that a wide discretion vests with the trial court while passing an order under Order 8 Rule 1(3) CPC and delay in seeking leave to produce a document is a valid reason to refuse leave to produce document, but at the same time all other relevant facts and circumstances are require to be taken under consideration. If the interest of justice warrants production of document then it should not be denied merely being belated. In the present case the trial court has not taken into consideration the facts leading to produce the written statement concerned. It is also relevant to note that the written statement sought to be produced by the petitioner defendant is not a suspicious document and its production in no way delay the proceedings of the suit. If interest of justice warrants and the principles of fair trial require that a document which is not out come of fraud or which is not a suspicious document be permitted to be taken on record even at belated stage.

In view of whatever discussed above, this petition for writ is allowed. The order impugned dated 10.11.2005 is quashed to the extent it rejects the application submitted by the petitioner under Order 8 Rule 1(3) CPC seeking leave to produce a copy of the written statement on the ground of delay. The matter is remanded with a direction to learned trial court to decide the application preferred by the petitioner defendant under Order 8 Rule 1(3) CPC afresh to the extent leave was refused to produce the written statement ignoring the delay in seeking leave.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.